

## Constitutional Challenges to State Unborn Victims (Fetal Homicide) Laws

November 26, 2007

(All challenges were unsuccessful. All challenges were based at least in part on *Roe v. Wade* and/or denial of equal protection, unless otherwise noted.)

### California

In *People v. Davis* [872 P.2d 591 (Cal. 1994)], the California Supreme Court upheld the legislature's addition of the phrase "or a fetus" to the state murder law in 1970, but held that the term "fetus" applies "beyond the embryonic stage of seven to eight weeks." (California Penal Code 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.") In *People v. Dennis* [950 P.2d 1035 (Cal. 1994)], the California Supreme Court upheld inclusion of fetal homicide under Penal Code 190.2(3), which makes a defendant eligible for capital punishment if convicted of more than one murder.

### Georgia

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit unanimously upheld the conviction of Richard James Smith, Sr., under Georgia's "feticide" statute. Smith argued that the law conflicted with *Roe v. Wade*, but the court rejected this assertion as "without merit." The court held: "The proposition that Smith relies upon in *Roe v. Wade* -- that an unborn child is not a "person" within the meaning of the Fourteenth Amendment -- is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus." *Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

### Illinois

*U.S. ex rel. Ford v. Ahitow*, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).

*People v. Campos*, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995).

### Louisiana

Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

### Minnesota

*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

## Missouri

In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

## Pennsylvania

On December 27, 2006, in the case of *Commonwealth of Pennsylvania v. Bullock* (J-43-2006), the Pennsylvania Supreme Court unanimously rejected an array of constitutional challenges to the Crimes Against the Unborn Child Act, 18 Pa. C.S. Sec. 2601 et seq., including claims based on *Roe v. Wade* and equal protection doctrine. Although the law applies "from fertilization until birth," a convicted killer, Matthew Bullock, had argued that U.S. Supreme Court precedents allowed such a law to apply only after the point that the baby is "viable" (able to survive indefinitely outside of the womb). The Pennsylvania justices rejected this argument, stating that "to accept that a fetus is not biologically alive until it can survive outside of the womb would be illogical, as such a concept would define fetal life in terms that depend on external conditions, namely, the state of medical technology (which, of course, tends to improve over time). . . viability outside of the womb is immaterial to the question of whether the defendant's actions have caused a cessation of the biological life of the fetus . . ."

Also: On January 24, 2003, in *Commonwealth of Pennsylvania v. Corrine D. Wilcott*, the Court of Common Pleas of Erie County rejected challenges asserting that the law is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person."

## Texas

In the case of *Terence Chadwick Lawrence v. The State of Texas* (No. PD-0236-07), issued November 21, 2007, the Texas Court of Criminal Appeals (the state's highest appellate court in criminal cases) unanimously rejected a convicted murderer's claims that the 2003 Prenatal Protection Act was unconstitutional for various reasons, including inconsistency with *Roe v. Wade*. In its summary of the case, the court explained that after learning that a girlfriend, Antwonya Smith, was pregnant with his child, defendant Lawrence "shot Smith three times with a shotgun, causing her death and the death of her four-to-six week old embryo." For this crime, Lawrence was convicted of the offense of "capital murder," defined in Texas law as causing the death of "more than one person . . . during the same criminal transaction." The court said that the abortion-related rulings of the U.S. Supreme Court have "no application to a statute that prohibits a third party from causing the death of the woman's unborn child against

her will." The court noted, "Indeed, we have found no case from any state supreme court or federal court that has struck down a statute prohibiting the murder of an unborn victim, and appellant [Lawrence] cites none."

## Utah

*State of Utah v. Roger Martin MacGuire*. MacGuire was charged under the state criminal homicide law with killing his former wife and her unborn child. He argued that the law, which covered "the death of another human being, including an unborn child," was unconstitutional because the term "unborn child" was not defined. The Utah Supreme Court upheld the law as constitutional, holding that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . ." MacGuire was also charged under the state's aggravated murder statute, which applies a more severe penalty for a crime in which two or more "persons" are killed; the court ruled that this law was also properly applied to an unborn victim and was consistent with the U.S. Constitution. January 23, 2004.

## Wisconsin

Re due process -- *State v. Black*, 526 N.W.2d 132 (Wis. 1994) (upholding earlier statute).

# State Homicide Laws That Recognize Unborn Victims (Fetal Homicide)

National Right to Life Committee  
June 25, 2008

What appears below is a summary of the laws of the 35 states that recognize the unlawful killing of an unborn child as homicide in at least some circumstances. The federal Unborn Victims of Violence Act, enacted April 1, 2004, covers unborn victims of federal and military crimes.

## Full-Coverage Unborn Victim States (25)

(States With Homicide Laws That Recognize Unborn Children as Victims Throughout the Period of Pre-natal Development)

**Alabama:** Legislation taking effect July 1, 2006 (HB 19) amended Section 13A-6-1 of the Code of Alabama to include "an unborn child in utero at any stage of development, regardless of viability" as a "person" and "human being" for purposes of the state laws dealing with murder, manslaughter, criminally negligent homicide, and assault.

**Alaska:** Alaska Statutes 11.41 (as amended by Senate Bill 20, enacted June 16, 2006) establishes the crimes of "murder of an unborn child," "manslaughter of an unborn child," "criminally negligent homicide of an unborn child," and "assault of an unborn child." Alaska Statutes 11.81.900(b) defines "unborn child" as "a member of species Homo sapiens, at any stage of development, who is carried in the womb."

**Arizona:** The "unborn child in the womb at any stage of its development" is fully covered by the state's murder and manslaughter statutes. For purposes of establishing the level of punishment, a victim who is "an unborn child shall be treated like a minor who is under twelve years of age." Senate Bill 1052, signed into law on April 25, 2005, amending the following sections of the Arizona Revised Statutes: 13-604, 13-604.01, 13-703, 13-1102, 13-1103, 13-1104, 13-1105, 13-4062, 31-412, 41-1604.11 and 41-1604.13.

**Georgia:** Legislation taking effect July 1, 2006 (SB 77) recognizes an "unborn child" (defined as "a member of the species homo sapiens at any stage of development who is carried in the womb") as a victim of the offenses of feticide, voluntary manslaughter of an unborn child, assault of an unborn child, and battery of an unborn child. (Official Code of Georgia Annotated, Sections 16-5-20, 16-5-28, 16-5-29, 16-5-80)

Legislation (SB 529) taking effect July 1, 2008 recognizes the crimes of "feticide by vehicle" in the first and second degree. (Section 40-6-393.1)

**Idaho:** Murder is defined as the killing of a "human embryo or fetus" under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Sess. Law Chap. 330 (SB1344)(2002).

**Illinois:** The killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Ill. Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12-3.1. A person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any

means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

**Kansas:** Under "Alexa's Law," signed into law on May 9, 2007, as part of HB 2062, effective July 1, 2007, an "unborn child," meaning "a living individual organism of the species *homo sapiens*, in utero, at any stage of gestation from fertilization to birth," is defined as a "person" and a "human being" for the purposes of the Kansas statutes against first degree murder, second degree murder, capital murder, voluntary manslaughter, involuntary manslaughter, vehicular homicide, and numerous battery offenses.

**Kentucky:** Since February, 2004, Kentucky law establishes a crime of "fetal homicide" in the first, second, third, and fourth degrees. The law covers an "unborn child," defined as "a member of the species *homo sapiens* in utero from conception onward, without regard to age, health, or condition of dependency."

**Louisiana:** The killing of an "unborn child" is first degree feticide, second degree feticide, or third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), (7), (11) (West 1997).

**Michigan:** The killing of an "unborn quick child" is manslaughter under Mich. Stat. Ann. § 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, a separate Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that intentionally, or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth," or cause "aggravated physical injury to an embryo or fetus." (M.C.L. 750.90a through 750.90f)

**Minnesota:** Since 1986 the killing of an "unborn child" at any stage of pre-natal development is murder (first, second, or third degree) or manslaughter, (first or second degree). It is also a felony to cause the death of an "unborn child" during the commission of a felony. Minn. Stat. Ann. §§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn child" through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. Ann. §609.21 (West 1999).

**Mississippi:** Under a law enacted May 6, 2004, and effective July 1, 2004, for purposes of enumerated state laws dealing with various types of homicide and certain other violent crimes, "the term 'human being' includes an unborn child at every stage of gestation from conception until live birth and the term 'unborn child' means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb." (SB 2869)

**Missouri:** The killing of an "unborn child" at any stage of pre-natal development is involuntary manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Vernon Supp. 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. W.D. 1997).

**Nebraska:** The killing of an "unborn child" at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-394. (2002) In addition, "The Assault of an Unborn Child Act," effective April 13, 2006, provides that a criminal attacker who causes "serious bodily injury" to an unborn child commits the offense of "assault on an unborn child" in the first, second, or third degree. "Unborn child" is defined as "an individual member of the species *Homo sapiens* at any stage of development in utero." (LB 57, 2006)

**North Dakota:** Since 1987 the killing of an "unborn child" at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12.1-17.1-01 to 12.1-17.1-04 (1997).

**Ohio:** At any stage of pre-natal development, if an "unborn member of the species *homo sapiens*,

who is or was carried in the womb of another" is killed, it is aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (Anderson 1996 & Supp. 1998).

**Oklahoma:** House Bill 1686, signed into law on May 20, 2005, recognizes "an unborn child" as a victim under state laws against murder, manslaughter, and certain other acts of violence. The law defines "unborn child" as "the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus." Following upon the law enacted in 2005, Senate Bill 1742, signed into law May 23, 2006, ensures that Oklahoma's recognition of the unborn child as a separate victim applies uniformly across all of Oklahoma's homicide statutes.

**Pennsylvania:** An individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an "unborn child" if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (1997) "Unborn child" and "fetus." Each term shall mean an individual organism of the species *Homo sapiens* from fertilization until live birth." On December 27, 2006, in the case of *Commonwealth of Pennsylvania v. Bullock* (J-43-2006), the Pennsylvania Supreme Court unanimously rejected an array of constitutional challenges to the law, including claims based on *Roe v. Wade* and equal protection doctrine.

**South Carolina:** S. 1084, signed into law and effective on June 2, 2006, recognizes a "child in utero" who is injured or killed during an act of criminal violence as a separate victim of a separate offense. The term "child in utero" is defined as "a member of the species *homo sapiens*, at any stage of development, who is carried in the womb."

**South Dakota:** The killing of an "unborn child" at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. §22-16-1, 22-16-1.1, 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 1997).

**Texas:** Under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire criminal code extend to "an unborn child at every stage of gestation from fertilization until birth." The law does not apply to "conduct committed by the mother of the unborn child" or to "a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent." (SB 319, Prenatal Protection Act)

**Utah:** The killing of an "unborn child" at any stage of pre-natal development is treated as any other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998) and UT SB 178 (2002). See Utah Supreme Court decision in *State of Utah v. MacGuire* (January 23, 2004).

**Virginia:** Effective July 1, 2004, Code of Virginia Section 18.2-32.2 provides: "Any person who unlawfully, willfully, deliberately, maliciously and with premeditation kills the fetus of another" may be imprisoned from 20 years to life; and any person who does so without premeditation may be imprisoned for not less than five nor more than 40 years.

**West Virginia:** 2005 Senate Bill 146, signed into law on May 20, 2005, provided that "a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims" for purposes of the state laws governing murder, manslaughter, and certain other crimes of violence. Code of West Virginia Section 61-2-30.

**Wisconsin:** Since 1998 the killing of an "unborn child" at any stage of pre-natal development is first-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide,

second-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or homicide by negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

### **Partial-Coverage Unborn Victim States (10)**

(States with Homicide Laws That Recognize Unborn Children as Victims, But only During Part of the Period of Pre-natal Development)

**NOTE:** These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes.

**Arkansas:** The killing of an "unborn child" of twelve weeks or greater gestation is capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-101 to 5-10-105. (A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

**California:** California Penal Code § 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." The words "or a fetus" were added by the legislature in 1970. The California Supreme Court later interpreted "fetus" to apply "beyond the embryonic stage of seven to eight weeks." (*People v. Davis*, 1994) In addition, Penal Code § 190.2(3) makes a defendant eligible for capital punishment if convicted of more than one murder, and the California Supreme Court ruled that fetal homicide is included under this provision as well (*People v. Dennis*, 1998).

**Florida:** The unlawful killing of an "unborn quick child" is murder in the same degree as if committed against the mother. [Fla. Stat. Ann. § 782.09 (West 2005)]. Other provisions cover the killing of an "unborn quick child" as manslaughter [Fla. Stat. Ann § 782.09 (West 2005)], vehicular homicide [Fla. Stat. Ann. § 782.071 (West 1999)], and DUI manslaughter [Fla. Stat. Ann. § 316.193 (West 2005)]. Under Fla. Stat. Ann. §§ 316.193 and 782.09, the term "unborn quick child" is the same as the term "viable fetus," which is defined in the following way: "... a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." [Fla. Stat. Ann § 782.071 (West 2005)].

**Indiana:** The killing of "a fetus that has attained viability" is murder, voluntary manslaughter, or involuntary manslaughter. Indiana Code 35-42-1-1, 35-42-1-3, 35-42-1-4.

**Maryland:** Under 2005 House Bill 398, amending Section 2-103 of the Annotated Code of Maryland, signed into law on May 26, 2005 and effective October 1, 2005, "A prosecution may be instituted for murder or manslaughter of a viable fetus," if the person prosecuted "intended to cause the death of the viable fetus, intended to cause serious physical injury to the viable fetus, or wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus."

**Massachusetts:** The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (Mass. 1989).

**Nevada:** The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 200.210 (1997).

**Rhode Island:** The killing of an "unborn quick child" is manslaughter. The statute defines "quick child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

**Tennessee:** The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann. § 39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997 & Supp. 1998).

**Washington:** The killing of an "unborn quick child" is manslaughter. Wash. Rev. Code Ann. § 9A.32.060(1)(b) (West Supp. 1999).

### **Conflicting Statutes**

**New York:** Under New York statutory law, the killing of an "unborn child" after twenty-four weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a "person" that is the victim of a homicide is statutorily defined as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinney 1998). See *People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Gloria C.*, 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).



One Hundred Eighth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,  
the twentieth day of January, two thousand and four*

An Act

To amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Unborn Victims of Violence Act of 2004" or "Laci and Conner's Law".

**SEC. 2. PROTECTION OF UNBORN CHILDREN.**

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

**"CHAPTER 90A—PROTECTION OF UNBORN CHILDREN**

"Sec.  
"1841. Protection of unborn children.

**"§ 1841. Protection of unborn children**

"(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

"(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

"(B) An offense under this section does not require proof that—

"(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

"(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

"(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are the following:

"(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 924(j),

930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

“(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

“(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) As used in this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item:

“90A. Protection of unborn children ..... 1841”.

### SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

#### “§ 919a. Art. 119a. Death or injury of an unborn child

“(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child’s mother.

“(2) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

“(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

“(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

H. R. 1997—3

"(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

"(c) Nothing in this section shall be construed to permit the prosecution—

"(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

"(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

"(3) of any woman with respect to her unborn child.

"(d) In this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 919 the following new item:

"919a. 119a. Death or injury of an unborn child."

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*